IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1324 of 1982

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUMATI WIFE OF DAVE OCCHAVLAL CHIMANLAL

Versus

GHANCHI AMBALAL MAGANLAL DIED THROUGH HIS HEIRS & LRS

Appearance:

MR SURESH M SHAH for Petitioner

MR AR MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/06/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original plaintiff-landlord who had sued the respondent-tenant for a decree of eviction on a number of grounds viz. that the tenant was in arrears of rent for more than six months, that the landlord required the premises for his personal and bonafide requirement, that the tenant has acquired suitable alternative residential accommodation, and that

the tenant has illegally sublet the suit premises.

2. The trial court, after examining the evidence on record arrived at findings of fact to the effect that the tenant was not in arrears of rent of more than six months, that the landlord had failed to establish his personal and bonafide requirements and that the landlord had failed to establish that the tenant had acquired alternative residential accommodation.

3. It is pertinent to note that the trial court has not specifically dealt with the allegation of illegal subletting on the part of the tenant, inasmuch as no issue on this controversy was raised or suggested, no evidence on this controversy was led, and this point was not argued before the trial court. The trial court, therefore, dismissed the suit on all the grounds.

4. The landlord, therefore, approached the appellate court by way of an appeal under section 29(1) of the Bombay Rent Act. On a reappreciation of the evidence on record the lower appellate court confirmed the findings of fact on all the three grounds against the landlord and dismissed the appeal. Hence the present revision.

5. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted.

7. Learned counsel for the petitioner-landlord has fairly conceded that so far as the findings on the question of arrears of rent, personal and bonafide

requirement of the landlord, and the tenant having acquired alternative residential accommodation are concerned, the same constitute concurrent findings of fact recorded by the two courts below, and he, therefore, would not seriously challenge these findings. He has, therefore, not addressed me on these points.

8. However, learned counsel for the petitioner-landlord contends that the plaintiff had made definite allegations that the defendant was guilty of illegal subletting, and in view of the absence of any specific denial in this regard in the written statement of the defendant-tenant, the landlord was entitled to a decree for eviction by way of a decree on admission or at least on an implied admission.

8.1 This question was raised in a different form before the lower appellate court, and the lower appellate court therefore, specifically raised a point for determination (at point nos.1 and 2) as to whether the issue of subletting ought to have been raised and is required to be raised at that stage and as to whether the plaintiff established that the defendant is liable to be evicted on the ground of subletting. The lower appellate court found in the negative on both these points. It was contended that the plaintiff has specifically pleaded that the defendant is guilty of illegal subletting. However, it requires to be noted that this cannot be said to be an emphatic or substantive pleading which would ipso facto give rise to an issue which requires determination on facts, or a pleading which would require a specific and emphatic denial. The lower appellate court has observed that it is only in para 4 of the plaint that "at the bottom cursorily mentioned that the defendant has sublet the suit premises without the consent of the plaintiff ...." The lower appellate court has also observed that the defendant-tenant in his written statement has denied many aspects of the averments made by the landlord in the plaint and has also denied at two specific places in the written statement that the plaintiff has no cause of action as alleged in the plaint so as to evict the defendant from the suit premises. However, this can only be considered to be general denials. There cannot be any doubt that there is no specific denial about the subletting in the written statement. However, this must be read in the light of the averments made in para 16 of the written statement that the averments in the plaint which are not specifically admitted are also denied. Thus, on an overall view of these pleadings would it be reasonable to say that merely by not making a very specific denial as

regards subletting, the tenant has made himself vulnerable to a decree for eviction on admission?

8.2 Firstly it must be seen from the very context of the provisions of Order 8, Rule 5 that a decree on admission is within the discretionary power of the court, where an allegation of fact in the plaint is not denied specifically, or "by necessary implication ....". In other words, a denial may either be specific or a denial may be required to be read into the written statement by the very nature of the controversy between the parties. On the facts of the case the lower appellate court has rightly observed that the averment in the plaint as to the ground of illegal subletting is also a weak and ineffective allegation, the same is devoid of material particulars, and the alleged sub-tenant is not even made a party defendant to the suit. On such facts, even a weak denial such as has been put up by the defendant, would in my opinion justify the denial of a decree on admission.

8.3 However, what is more material is that the provisions of Order 8, Rule 5 are initially intended to apply to the trial court. So far as the present case is concerned, no issue was raised before the trial court and no evidence was led and the point was not even argued before the trial court. In other words, the trial court was not requested to pass a decree on the basis of the defendant's admission or an implied admission. This contention is raised for the first time before the lower appellate court.

8.4 What is equally important is that the lower appellate court has not merely examined the issue from the academic point of view, but is also examined oral and documentary evidence on record for the purpose of ascertaining whether the respective parties have made out the cases respectively pleaded by each of them.

9. The lower appellate court has, as a result of this exercise, come to a definite finding of fact that the evidence which has in fact been led by the plaintiff on the question of alleged subletting on the part of the tenant is vague and totally insufficient to establish that the tenant was guilty of illegal subletting. When the lower appellate court arrived at this conclusion, it can only be regarded to be a finding of fact based on the appreciation of evidence on record. Seen from this perspective, even on a reappraisal of the evidence on record, I see no reason to take a different view of the matter.

10. In conclusion, therefore, I find that there is no substance in the present revision and the same requires to be dismissed. It is accordingly dismissed. Rule is discharged with no order as to costs.

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